

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: T.M and J.M. : APPEAL NOS. C-140528
C-140532
: C-140542
TRIAL NO. Fo4-2236z
: *JUDGMENT ENTRY.*

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

These are appeals from a decision of the Hamilton County Juvenile Court which granted permanent custody of T.M. and J.M. to the Hamilton County Department of Job and Family Services (“HCJFS”). Atiya is the mother of T.M. and J.M. Ronson is the father of J.M. Atiya, Ronson and the children, through their attorney, appealed the court’s decision. The decision was supported by competent and credible evidence, so we affirm the judgment.

On January 14, 2009, seven-year-old T.M. and four-year-old J.M. were placed in the temporary custody of HCJFS, based on an allegation that Atiya had abused T.M. T.M. was subsequently adjudicated abused and dependent, and J.M. was adjudicated dependent. Both children have been in foster care since January 14, 2009. Atiya was given a case plan with the goal of reuniting her with her children. To that end, she was allowed supervised visitation with the children. Ronson was given unsupervised visitation rights.

HCJFS twice attempted to allow Atiya unsupervised visitation with the children. The first attempt ended in failure because she was charged with disorderly

conduct for a fight with her boyfriend, and she was returned to supervised status in November 2009. A second try at unsupervised visits was put to a halt in February 2010, when the children witnessed a fight between Atiya's boyfriend and brother that resulted in the boyfriend being knifed by the brother. In January 2011, HCJFS moved to terminate temporary custody and award legal custody of both children to Ronson. That motion was withdrawn when Ronson became homeless. In March 2011, HCJFS moved to modify temporary custody to permanent custody.

Following a hearing, the magistrate issued a decision granting HCJFS's motion for permanent custody of both children. Atiya, Ronson and the children filed objections to the decision. After hearing additional testimony, the trial court overruled the objections and adopted the magistrate's decision awarding permanent custody to HCJFS.

Before the juvenile court may terminate parental rights, it must find both that it is in the best interest of the child to be placed in the permanent custody of the moving agency and that one of the four conditions listed in R.C. 2151.414(B) is met. R.C. 2151.414(B)(1) and (D)(1). While the juvenile court must find that both prongs are supported by clear and convincing evidence, we will not substitute our judgment for that of the juvenile court where some competent and credible evidence supports the essential elements of the case. *See In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46, *see also In re E.S.*, 1st Dist. Hamilton Nos. C-100725 and C-100747, 2011-Ohio-586, ¶ 3.

Here, there is no question that the R.C. 2151.414(B)(1)(d) condition was met. The children had been in the custody of HCJFS for more than 12 months of a 22-month period at the time of the filing of the motion for permanent custody. The parties argue instead that the court's conclusion that the permanent custody was in the best interests of the children was not supported by the evidence.

The best-interest determination is guided by R.C. 2151.414(D)(1). With respect to the relationship of the children to their parents, siblings, relatives and foster parents, the court found that both children had a relationship with their mother and a visiting relationship with Ronson, that there was no relationship with T.M.'s father, and that the children's relationship with other relatives—specifically, their maternal grandmother and Atiya's ex-boyfriend—was detrimental to their interests. R.C. 2151.414(D)(1)(a). The court acknowledged that both children wished to be with their mother, but that the guardian ad litem supported permanent custody. R.C. 2151.414(D)(1)(b). The court also took into account the length of time the children had been in foster care. R.C. 2151.414(D)(1)(c). As for R.C. 2151.414(D)(1)(d)—the children's need for permanency and whether that could be achieved without granting permanent custody to HCJFS—the court found that “the continued violent environment of the mother and her demonstrated limited ability to comprehend the special needs of her children * * * precludes a return home in the foreseeable future.” R.C. 2151.414(D)(1)(d). These findings were supported by the record.

In addition to challenging the court's findings with respect to J.M.'s best interest, Ronson maintains that the record does not support the court's finding that J.M. could “not be placed with either of [her] parents within a reasonable time or should not be placed with [her] parents.” R.C. 2151.414(B)(1)(a). Because the R.C. 2151.414(B)(1)(d) element—agency custody for 12 or more months of a consecutive 22-month period—was found, a finding under R.C. 2151.414(B)(1)(a) was not necessary to grant permanent custody. Nonetheless, the court did consider whether the children could be placed with either parent within a reasonable time, and looked to the factors listed in R.C. 2151.414(E) in making its determination. If the court finds clearly and convincingly that at least one factor listed in R.C. 2151.414(E) exists,

it “shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.”

The court found the R.C. 2151.414(E)(1) factor—continuous and repeated failure to substantially remedy the conditions that caused the children to be removed from the parents—to be present because, although Atiya had completed case services, her “aggressive actions did not abate.” The court also found the R.C. 2151.414(E)(15) factor—likelihood of recurrence of abuse—because Atiya had anger-control problems and impulse-control problems. Finally, the court cited under R.C. 2151.414(E)(16)—any other factor the court considers relevant—Atiya’s history of anger and violence, her lack of appreciation of the risk to her children caused by her association with her violent relatives, and the difficulties posed by T.M.’s emotional problems. The court’s findings under R.C. 2151.414(E) were supported by the record.

We therefore conclude that the court’s determinations that permanent custody was in the best interests of T.M. and J.M., and that the children could not be placed with their parents were supported by competent, credible evidence. The assignments of error of Atiya, Ronson and the children are overruled, and the judgment of the juvenile court is affirmed.

Therefore, we affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HENDON and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on December 24, 2014
per order of the court _____.

Presiding Judge